

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 7, 2003

IN RE:

APPLICATION OF BROADBAND INNOVATIONS, INC.
FOR CERTIFICATE TO PROVIDE COMPETING
LOCAL EXCHANGE TELECOMMUNICATIONS
SERVICES

DOCKET NO.
02-00819

ORDER DENYING MOTION TO DISMISS
AND ESTABLISHING PROCEDURAL SCHEDULE

This matter is before the Pre-Hearing Officer for consideration of the *Motion to Dismiss* filed by intervener Aeneas Communication, LLC ("Aeneas") and for establishment of a procedural schedule.

Aeneas filed its *Motion to Dismiss* (the "*Motion*") on December 9, 2002. In this *Motion*, Aeneas requested that an article from *The Jackson Sun* attached to the *Motion* be filed in this docket. Aeneas further stated:

The article states that the Applicant, Broadband Innovations, Inc. "in all probability . . . will disband," according to Curtis Graves, president. Mr. Graves' statement indicates the above-captioned Application may now be moot.

In order to save the parties further time and expense, Aeneas therefore requests that the TRA determine whether Mr. Graves intends to pursue his Application and, if not, to enter an order of dismissal.¹

On December 23, 2002, Broadband Innovations, Inc. ("Broadband") filed a *Response to Motion to Dismiss* (the "*Response*"). Broadband argues four points in this *Response*:

¹ *Motion to Dismiss*, December 9, 2002.

(1) Broadband has no contract with the Jackson Energy Authority, (2) Broadband renews its objection to Mr. Henry Walker's participation in this proceeding as counsel for Aeneas, (3) Broadband objects to the admission of the article from *The Jackson Sun*, and (4) Broadband requests that the Authority "continue processing" Broadband's Application and deny Aeneas' *Motion to Dismiss*.²

Point (1) raised by Broadband is a factual issue that remains to be decided. As to point (2), the Pre-Hearing Officer is unable to find a previous objection to Mr. Walker's participation, except in the sense that Broadband objected in general terms to Aeneas' August 13, 2002 *Petition to Intervene*.³ The Pre-Hearing Officer has already denied Broadband's objection to the petition to intervene in an Order dated December 6, 2002. If Broadband intends to make an objection specifically to Mr. Walker's participation, it should state its objection and provide support therefor. The Pre-Hearing Officer will then establish a schedule to resolve matters relating to such objection. As to point (3), the Pre-Hearing Officer first determines that the article from *The Jackson Sun* does not meet the standard of reliable evidence sufficient to support a motion to dismiss or a motion for summary judgment. Second, to the extent that the article is considered at all, Broadband has responded to and refuted its contents.

Point (4) of Broadband's *Response* and the *Response* in general clearly evidence Broadband's intention to pursue its Application. Aeneas' Motion to Dismiss is therefore denied. Further, in order to move this matter towards a resolution, the Pre-Hearing Officer hereby establishes the following procedural schedule:

February 18, 2003

Discovery requests.

² *Response to Motion to Dismiss*, December 23, 2002.

³ *See Objection to Petition to Intervene*, August 29, 2002.

February 25, 2003

Responses to discovery requests.

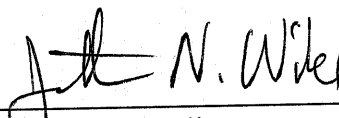
March 3, 2003

Pre-filed direct testimony of both parties.

March 10, 2003

Rebuttal to pre-filed direct testimony of both parties.

Except as noted otherwise, all filings are required to be submitted to the Authority no later than **2:00 p.m.** on the date they are due. Requests for extensions of time shall be made by written motion and shall state the grounds therefor. At a later date, the Pre-Hearing Officer will schedule and issue a notice of a Hearing on the merits.



Jonathan N. Wike
Pre-Hearing Officer